

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4806 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTIBHAI BABARBHAI PATEL

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/12/98

ORAL JUDGEMENT

Rule. Mr.H.S.Munshaw, learned advocate for the respondents waives service of Rule. On the request of the parties, Rule is heard.

2. The petitioner was working as a driver in Surat Depot of the respondent-corporation. As per his say, on 17.8.95 he left his house at 11.00 a.m. for attending the duty at 12.30 p.m., on the way he met with an

accident in which he sustained serious injury in the right leg. As per the medical certificate, there is a compound segmental fracture. Right fibula was operated. The Superintendent of Civil Hospital, Surat under certificate dated 24.7.96, declared him unfit for driver post. In view of this, the petitioner asked the respondent-corporation to give him light work either on the post of peon or helper. Instead of considering the application, the respondent-corporation had transferred the petitioner to Bardoli Depot by order dated 27.2.1996. The petitioner was not able to report and resume the duty at Bardoli Depot as it was not possible for him to drive the bus. On account of this, the Bardoli Depot Manager had issued charge-sheet on 12.4.96 and departmental inquiry was conducted against the petitioner.

3. An affidavit has been filed by Shri N.B.Patel, Divisional Controller of the respondent-corporation. It is denied that the petitioner met with an accident while on way to join the duty. It is further submitted that the petitioner was to join the duty at 3.30 p.m. whereas the accident took place at 11.30 a.m. Thus, it cannot be said that the petitioner was on way for joining the duty. It is further stated that the petitioner is not entitled to recategorisation as per provisions of settlement dated 21st December, 1989. It is clearly provided in the said settlement that only if an employee meets with an accident while on job and declared physically unfit then only he is entitled to recategorisation depending upon his qualification.

4. I have heard learned counsel for the parties. Without going into the controversy as to whether the petitioner met with an accident while on way for joining the duty or as to whether his case is covered by the settlement. In my view, on human consideration, the petitioner is entitled to be entrusted light work more particularly when he is ready to work down graded post like helper or peon. The Apex Court in the case of Narendra Kumar Chandla Vs. State of Haryana and others - reported in AIR 1995 Supreme Court p.519 has observed that,

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is

unjust."

5. It is evident from the medical certificate that the petitioner has sustained permanent disability with an incapacity to drive the bus. In view of this, he cannot be compelled to drive the bus. He can also be not deprive of the job from the reasons that unfortunately he sustained injury in the right leg. The settlement cannot be said to be a last word. The respondent ought to have consider this aspect as a human problem. In the facts of the case, the demand of the petitioner is genuine.

6. In view of the aforesaid discussion, this Special Civil Application is allowed. The respondent-corporation is directed to give the petitioner light work as helper or peon. The inquiry instituted against him shall stand quashed. The petitioner gave a statement before this court on 23rd June, 1998 that he will not claim the backwages. In view of this, he will not be entitled to backwages, but, he will be entitled to continue of the service. The respondent-corporation is directed to comply the order within the period of six weeks from the date of the receipt of the writ.

Rule is made absolute to the aforesaid extent.

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